

REMARKS***Response to Restriction Requirement***

The Examiner has made a restriction requirement with respect to different inventions said to be encompassed by claims 1-11 and 16, by reason of the “numerous variables in the claims, e.g. Q_a, Q_b, R₁, etc., and their widely divergent meanings,” asserting that a precise listing of the inventive groups cannot be made. However, the Examiner has listed Group I - VI as being exemplary, noting that Applicant may instead choose to elect a different invention “by identifying another specific embodiment not listed in the exemplary groups of the invention and the examiner will endeavor to group the same.”

Applicant hereby elects, with traverse, the invention of the Examiner’s Group III, “claims 1-9 and 11 (in-part), drawn to products of Formula I wherein Q_a is an optionally substituted phenyl; and Q_b is an optionally substituted pyridyl ring.” This election is made with traverse inasmuch as Applicant does not agree with the Examiner’s assertion that the common structural core of the presently claimed compounds does not define a contribution over, “for example, the compound D118 on page 185 of WO 01/70671,” and Applicant reserves the right to contest this assertion should it be made in context of a prior art rejection during prosecution of this application on the merits.

As further required on page 7 of the Action, Applicant identifies as the claims encompassing the elected invention, claims 1-9 and 11, as well as new compound claims 17-22, all as amended above and discussed below.

In accordance with the Examiner’s comment on page 8 of the Action, since restriction has been required between product and product claims and Applicant has elected the product claims, it is understood that withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder in this application. Applicant has therefore left process for preparing claim 10 and method of treatment claim 16 pending, but designated as “withdrawn.” Inasmuch as these process claims are dependent on the elected compound claims as amended, they are necessarily commensurate in compound scope with the elected invention and should be eligible for rejoinder upon allowance of a compound claim upon which they are dependent.

Claim Amendments

Compound claims 1-9 have been amended above to be directed toward the elected invention, and to avoid duplication by reason of the restriction of the definitions of Q_a and Q_b as required by the Examiner's definition of Group III. Thus claims 1, 2 and 3 have been amended to define Q_a as an optionally substituted phenyl, and/or to define Q_b as an optionally substituted pyridyl. Claims 4-6 and 8 have been cancelled inasmuch as they become duplicates of preceding claims by reason of the restricted definitions of Q_a and Q_b, and claim 3 has been made dependent on claim 1 only to maintain consistency in its definition of the optional substituents on Q_a. Claim 9 has been amended to recite only compounds that fall within the scope of the elected invention as defined by amended claim 1. Compound and pharmaceutical composition claims 7 and 11 remain pending without need for further amendment.

Process for preparing claim 10 has been maintained, but designated as withdrawn. Inasmuch as all variable moieties recited in the process steps of claim 10 are defined with reference to amended claim 1, claim 10 is necessarily consistent in scope with the elected invention and should be eligible for rejoinder upon allowance of amended claim 1.

Similarly method of treatment claim 16 is dependent for compound definition on any one of claims 1, 2 and 9 as amended, and also is necessarily consistent in scope with the elected invention and should be eligible for rejoinder upon allowance of the claims upon which it is dependent.

Each of new independent claims 17-22 is directed to a different single compound or a pharmaceutically acceptable salt thereof, and falls within the scope of the elected invention.

Support for these new claims is found as follows:

- The compound of new claim 17 is the 1st listed compound of *amended* claim 9, and is also the compound of Example 4 on specification page 43.
- The compound of new claim 18 is the 2nd listed compound of *amended* claim 9, and is also the compound of Example 5b (the compound in the table at specification page 44 associated with Note b).
- The compound of new claim 19 is the 3rd listed compound of *amended* claim 9, and is also the compound of Example 5q (the compound in the table at specification page 44 associated with Note q).

- The compound of new claim 20 is the 4th listed compound of *amended* claim 9, and is also the compound of Example 5s (the compound in the table at specification page 45 associated with Note s).
- The compound of new claim 21 is the 5th listed compound of *amended* claim 9, and is also the compound of Example 5y (the compound in the table at specification page 45 associated with Note y).
- The compound of new claim 22 is the 7th listed compound of *amended* claim 9, and is also the compound of Example 5ae (the compound in the table at specification page 45 associated with Note ae).

The above amendments are being made without waiver or disclaimer, and Applicant reserves the right to prosecute any subject matter that has been deleted thereby in one or more divisional applications.

It should be readily apparent that no new matter has been added by the above amendments. Therefore, entry of these amendments is believed to be in order and is respectfully requested. Following entry of these amendments, claims 1-3, 7, 9-11 and 16-22 remain pending in this application, with claims 10 and 16 being designated as withdrawn, pending rejoinder.

Technically Related Application

Applicant wishes to bring the Examiner's attention to copending application 10/947,463 of Applicant's assignee, which might be considered to be technically related to the present application. Application 10/947,463 was filed September 23, 2004 and published as US 2005-0038081 on February 17, 2005, which application is assigned to Examiner Betton in GAU 1617 and in which a Notice of Allowance was mailed October 29, 2009. Application 10/947,463 is a divisional of prior application 09/762,106 filed February 2, 2001, which was filed as the US National Stage of International Application PCT/GB99/02494 filed July 29, 1999, which published as WO 00/07980 on February 17, 2000. Prior application 09/762,106 issued as US Patent 6,821,965 on November 23, 2004.

The above noted publication US 2005-0038081 and granted US Patent 6,821,965 are listed on the form PTO-1449 submitted herewith. WO 00/07980 was previously cited on the form PTO-1449 accompanying the Information Disclosure Statement filed with the present

application on June 1, 2006, and a copy thereof was submitted with that Information Disclosure Statement together with a copy of the International Search Report in which WO 00/07980 was also cited. WO 00/07980 is also discussed in the present application at page 3, lines 9-12.

Except for issue fees payable under 37 C.F.R. §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME in accordance with 37 C.F.R. §1.136(a)(3).

Respectfully Submitted,
Morgan Lewis & Bockius LLP

Date: **November 2, 2009**
Morgan Lewis & Bockius LLP
Customer No. **09629**
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel. No.: 202-739-3000

By: /Donald Bird/
Donald J. Bird
Registration No. 25,323
Tel. No.: (202) 739-5320
Fax No.: (202) 739-3001